

Special Municipal Council Meeting
Thursday, October 5, 2006
Town Hall Auditorium
6:30PM

Call to Order 6:30PM

Pledge of Allegiance

Roll Call: Roger Benson, Hank Brennick, Ann Connolly King, Robert Lavoie, Alison Lindstrom, Donna McClure, Mario Pinierio, Michelle Thone, and Christopher Lawrence

Public Hearing

2006-088 An Order to vote to appropriate \$80,000 – Emergency repairs to the Police Station – Mayor Kezer sponsor

President Lawrence read 2006-088 into the record and asked for the Finance Committee recommendations.

Councilor Brennick states the Finance Committee discharged 2006-088 back to the Municipal Council with no recommendation.

President Lawrence opens the public hearing.

James Thieverge, 11 ½ Sanborn Terrace – Mr. Thieverge feels because the town accrued \$500,000 in free cash, excess revenues, he hopes the total assessment of user fees will be returned to the people in Amesbury.

Curtis Wallace, 91 South Hampton Rd. – Mr. Wallace urges the council to approve \$80,000 for repairs to the Police Station. He feels \$40,000 is not enough money fix the problem as was suggested at the Finance Committee.

Annette Denietolis, 21 Orchard St. – Ms. Denietolis thanks the Council and members of the Finance Committee for asking tough questions. She wants the men and women of the Police Department to be in a good healthy building, protect the equipment and maintain property that the town owns. She is basically in favor of the appropriation. She feels procedures need to be in place for emergencies in the future to avoid all the bickering. She would like the Council to move forward and get the repairs done in a way that does not expose the Town of Amesbury to anymore liabilities. Making sure the contractor awarded the job meets all the state requirements. She states Amesbury is very generous community to their Police Department, they have the biggest budget in the State for a community of this size. She also feels if the town had a working CIP this ordinance would never have come up.

Claude Gonthier, Kimball Road – Mr. Gonthier believes the Police Station needs to be taken care of. He states there needs to be an assessment done of the condition the municipal buildings are in. The maintenance needs of the municipal buildings have got to be done in an orderly and progressive manner. Mr. Gonthier would also like to see the council trying to seek some legislative change in the prevailing wage so the town can have more control.

Councilor Lavoie states this is an unavoidable expense that needs to be done. The Building Inspector agrees with the scope of the repair and any dollars funded under \$80,000 will just have to be paid at a later date. He urges the council to vote for the appropriation.

Councilor Benson urges his fellow councilors to vote in favor of 2006-088. He believes there is a serious problem at the Police Station that needs to be addressed. He feels the process has been done correctly.

Councilor Benson moves for approval of 2006-088 as submitted, Councilor Lavoie second.

President Lawrence believes the police station does need some work however; he believes the request for appropriation should come after bids are received. He feels it is unfortunate the council had to work so hard to get information from the Mayor's office or other departments of the Town.

Councilor Pinierio believes the building should be fixed. He asks about using \$42,000 from last years free cash. Mayor Kezer explains last years free cash was certified on July 1st. Councilor Pinierio asks about the remaining \$27,000 from the communication center appropriation. Lt. Ingham responds the \$250,000 appropriation had two phases. One, the equipment \$223,000, and the remaining was for construction, carpentry, flooring and wiring. He states it will exceed \$250,000 and he will be taking some funds from his operating budget. He further states that the mold testing and remediation was not included in the \$80,000, it will be separate and if within reason, the operating budget will pay for it.

Councilor Lindstrom asks why the water leak wasn't noticed when the new windows were installed in the front of the building. Lt. Ingham states they knew there was structural damage but never thought it was this bad. It wasn't until the lath was taken down to install the new communication center that the mold was noticed. Councilor Lindstrom asks why the building wasn't waterproofed, Lt. Ingham states it was. She states the police budget has as much in their maintenance line item as do five other buildings combined. Lt. Ingham responds, his building is open 24/7 and houses 44 full time people, plus people coming in and out. He also pays his janitor, cleaning supplies and boiler maintenance out of that line item.

Councilor Brennick states he is surprised the \$27,000 is gone; it didn't even come out in the newspaper. Lt. Ingham says they were very specific, there were construction costs involved.

Councilor King would like to remind the council of section 3-12 of the charter - involvement in administrative affairs. She feels a number of the issues that the council delved into were beyond the scope of the council. Calling contractors, checking out bids before the bids have been awarded totally over stepped the bounds of what the council's roll is.

Councilor Thone responds to Councilor King's comment of over stepping bounds. She does not believe any question should be out of bounds. Any questions that were asked a taxpayer should be able to ask. She believes as a councilor it is a responsibility to ask questions. The charter is clear with regards to the councilor's responsibilities to do investigations, inquiries into the affairs of the town.

Councilor Lavoie agrees the legislative branch has oversight capacity to ask questions of employees but, to get into the bidding process is wrong. After the procurement process if the council feels something was inappropriate then the council can investigate. While the process is going on there clearly is a line between legislating and appropriating the money versus trying to do the procurement yourself.

Councilor McClure addresses the concerns on the bidding issue. There were no questions to any bidders until after the Mayor announced the apparent winner in the newspaper. There was no interference or request to change the bid. She called a bidder five days later and asked "you went through the building, what did you think?" She did not ask him to change a bid, just asked him what he saw. She does not feel that was over stepping her bounds and if it is; she will over step them again.

Mayor Kezer feels there is a disagreement as to what is appropriate relative to an open bid process. He has determined, based on comments made and transcripts he read, that it was inappropriate contact with a bidder during a bid process. Not a fatal error in the sense that it would throw out the process. There is no end result yet, it is still an open bid process. There has been no award of the contract. This disagreement of opinion can be sent to the Attorney Generals office, let them review it and ask them if it was inappropriate action during an open bid process.

Councilor McClure has contacted the Attorney Generals office and is waiting for their response.

Lt. Ingham spoke with Deborah Anderson at the Attorney Generals Office, Bid and Procurement Unit. They discussed the whole process that took place and it was determined everything was lawful. He discussed Councilor McClure's actions and getting involved in the bid process; Ms. Anderson's statement was that it was very inappropriate because they are the legislative branch of government. He feels her action did change the bid process and if there was an award given it was on the edge of criminal behavior.

Councilor McClure asks if her actions were as inappropriate as not telling DCAM one of the bidders was the Chief's brother.

Lt. Ingham states it is not DCAM position. He states Councilor McClure said that Lt. Ingham and the Chief gave misleading information and if that is the criteria for defamation of character he will sue her. He won't sue the Town because fortunately he would not do that to the Town but, he would sue Councilor McClure personally for defamation of character because she is out of control.

Councilor McClure responds you can certainly do that.

Claude Gonthier, Kimball Rd. – Mr. Gonthier feels Councilor McClure was acting in the capacity of a finance member not as a Municipal Councilor; the legislature is different from the finance committee.

Councilor Benson states under the City form of government the finance committee is directly accountable to the Municipal Council, the legislature. Under a Town form of government the finance committee is separate. Councilor McClure's letters are written on letter head that says Councilor At Large.

Mayor Kezer responds to the involvement of DCAM and the challenges of the process. He handed out copies to the Council and had copies in the back of all the correspondences referring to the challenges to the procurement process by Councilor McClure that she sent to DCAM (attached). He refers to a letter sent by Councilor McClure to George Matthews, Deputy General Counsel for DCAM in which she writes "to what she believes is a flawed process in the request to your office for an emergency waiver" and another quote saying "I believe your office received misinformation as well as information left out of the process leading you to grant this waiver". In his opinion it is challenging the

integrity of a person who has been a sworn officer of the law for over 30 years, who is just trying to get bids, to go through a process and get a contract. Mayor Kezer received a call from DCAM regarding a second letter from Councilor McClure with challenges in order to address the accusations to the whole process. He responded back to DCAM, and the bottom line is that DCAM is satisfied that a competitive process was used and there is no reason to rescind the waiver. There is no procurement law saying it prohibits the Chief's brother from bidding. He believes it is his job as Mayor to insure the integrity of the process and it was done. His assessment of the past two weeks is that the whole process was challenged from day 1 regarding the format as to how it was submitted. There have been challenges to the scope of work, the scope was written by the Chief who happens to be a mason. The scope was advertised and shared with any and all bidders who would inquire. The written quotes received have not been awarded because the Mayor can not award a contract without an appropriation; which conflicts with Council Presidents opinion as to how the bid process is done. Mayor Kezer does not believe the Finance Committee or legislative branch should be investigating every aspect of the bid process. He states after three hours of interrogation as to how they did their jobs, which they are paid to do; the Finance Committee couldn't come up with a recommendation on the appropriation.

Councilor Thone responds that at the last Finance Committee meeting 8 out of 10 measures before them were sent back with no recommendation because they were deadlocked and had to move forward. With regard to Councilor McClure challenging integrity; it was never stated in her letters. She feels the Mayor read the letters and it was his interpretation that it was implied. Councilor Thone states Councilor McClure was questioning the process; that is her job, obligation and fiduciary responsibility. Councilor Thone has a problem with the Mayor challenging Councilor McClure's integrity as a councilor by writing in his letter to Mr. Matthews at DCAM "I believe you will find the issues raised by the Councilor are superficial and political".

Councilor Pinierio agrees with Councilor Thone and McClure, it is his job to ask questions. He does not like the Mayor disrespecting any of the Councilors

Councilor Benson asks the President call the question.

Councilor Benson moves for approval of 2006-088 as submitted, Councilor Lavoie second.

*Roll Call Vote – 3 Yes, 6 No (Brennick, Lindstrom, McClure, Pinierio, Thone, Lawrence)
Motion Fails*

*Councilor McClure motions to authorize \$40,000 from Free Cash contingent upon the appropriation being placed in a separate line item under municipal buildings account 192 for the sole use of repairs of the police building. Additionally, prior to the installation of any new communication center equipment a mold expert shall be called in to test and identify and advise options for remediation.
Councilor Pinierio*

Councilor Benson asks if the Council has the power to say where an appropriation comes from.

Councilor McClure withdraws her motion.

Councilor Thone suggests to Councilor McClure to make a recommendation that it come from free cash and also add it does not come from taxes. She states there is several hundred thousand in free

cash and it should be used for this. She adds that if the Mayor sent this in any other form she would deny it.

Mike Basque states the only person who can request an appropriation from free cash is the Mayor. He believes it can be either approved or rejected not amend the dollar amount.

Councilor Thone suggests to try Councilor Bensons motion again to see if it is the will of the Council.

Councilor Lavoie moves for reconsideration, Councilor Benson second
Voted – 3 Yes, 6 No (Brennick, Lindstrom, McClure, Pinierio, Thone, Lawrence)
Motion Fails

Councilor Pinierio recommends the Mayor resubmit 2006-086 as a late file and recommend that it comes out of free cash at the next council meeting in October. He believes it's a very strong possibility it will pass.

President Lawrence takes the next agenda item. A correspondence from DCAM of surplus property. He states it is for their information; the town does have to respond by October 20th. Nipun Jain will give a recommendation at the October 10th meeting.

Councilor Lavoie asks if the council will be able act on the DCAM letter. President Lawrence responds, yes on October 10th. The special meeting is over, motion to adjourn.

Councilor Pinierio motions to adjourn, Councilor Lindstrom second – Voted Unanimous
Meeting adjourned 8:05PM.

Respectfully submitted,

Assistant Town Clerk